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FEDERAL AVIATION
ADMINISTRATION

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DRAFT REGULATORY EVALUATION, INITIAL REGULATORY FLEXIBILITY DETERMINATION, INTERNATIONAL TRADE IMPACT ASSESSMENT, AND UNFUNDED MANDATES ASSESSMENT

CODIFICATION OF CURRENT FLIGHT RESTRICTIONS IN THE VICINITY OF NIAGARA FALLS, NY.

Notice of Proposed Rulemaking
(14 CFR Part 93)

Office of Aviation Policy and Plans
Operations Regulatory Analysis Branch, APO-310
Reviewed by Thomas C. Smith
July 2001

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EXECUTIVE SUMMARY

This Notice of Proposed Rulemaking (NPRM) would codify current flight restrictions for those aircraft operating in the U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is proposing this action to complement flight management procedures established for the Falls by Transport Canada. Additionally, this action proposes to modify the title of part 93 to better describe activities therein.

The NPRM would result in no incremental costs to sightseeing aircraft operators and would maintain the current level of aviation safety, increase the harmonization of the U.S. Federal regulations with Transport Canada, and better describe the intent and activities addressed by part 93.

This proposed rule would neither have an impact on domestic or foreign entities engaged in international trade nor have a significant economic impact on a substantial number of small entities. The proposed rule does not contain any Federal intergovernmental or private sector mandates; therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

I. INTRODUCTION

The proposed rule would codify current flight restrictions for those aircraft operating in the U.S. airspace in the vicinity of Niagara Falls, NY and modify the title of part 93 to better describe activities therein.

II. BACKGROUND

On September 29, 1992, a fatal accident occurred when two sightseeing helicopters collided over Niagara Falls. To ensure safety, Transport Canada restricted aircraft operations, in Canadian airspace, within a 2 nautical mile radius of Niagara Falls. After soliciting public comment and carefully evaluating the needs of operators and the public interest, Transport Canada designated an area below 3,500 feet and within a 2-mile radius of the scenic Falls as restricted uncontrolled airspace. In part the Canadian action restricted aircraft operations within the specified area except for medical and police operations and those operations specifically authorized by the Regional Director for Air Carrier Operations, Ontario Region, Transport Canada. The designated area excluded U.S. airspace.

To complement this action, the FAA issued a temporary flight restriction (TFR) addressing aircraft operations in U.S. airspace adjacent to the Falls. As published in the Airport/Facility Directory, Northeast Edition, no flight is authorized below 3,500 feet MSL except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC

approved IFR flight plan, aircraft operating the scenic falls route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY, the FAA coordination facility.

On February 10, 1993, the FAA published a notice of public meeting in the Federal Register soliciting public/industry views/comments for determining the most appropriate special flight rules over U.S. airspace in the vicinity of the Falls. The public meeting was held on March 9, 1993, at Niagara Falls City Hall, Niagara Falls, NY. Reconsideration/possible modification of the Canadian airspace flight restriction was not discussed at this meeting.

III. PROPOSED RULE

The proposed rule would codify current flight restrictions for those aircraft operating in the U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is proposing this action to complement flight management procedures established for the Falls by Transport Canada. Additionally, this action proposes to modify the title of part 93 to better describe activities therein.

IV. COSTS AND BENEFITS

A. Costs

The FAA has determined that the proposed codification of current flight restrictions for those aircraft operating in U.S. airspace in

the vicinity of Niagara Falls, NY would result in no incremental costs to sightseeing aircraft operators.

Sightseeing aircraft operators would incur no incremental costs because, in this specific case, the baseline, which is defined as current practice, is no different from the proposed rule. Under current practice, a temporary flight restriction is in effect since 1992 in the airspace above Niagara Falls to prevent an unsafe congestion of sightseeing and other aircraft. No flight is authorized except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC approved IFR flight plan, aircraft operating the scenic falls route pursuant to approval of transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo, NY. The FAA believes that the temporary flight restriction has generated costs for sightseeing aircraft operators by preventing commercial air tours in U.S. airspace adjacent to the Falls. However, the agency is unable to measure the baseline cost impact at this time and solicits comments from affected entities requesting that all comments be accompanied by clear documentation. Under the proposed rule, the flight restriction would remain in effect; thus, the FAA does not expect any incremental costs on sightseeing aircraft operators.

The revision of aeronautical charts to codify current flight restrictions would not create any additional cost because these

changes are considered part of the normal periodic updating of charts. The FAA currently revises sectional charts every six months to reflect changes in the airspace environment. Changes required to depict the airspace in the vicinity of Niagara Falls, NY would be made during the charting cycle. Thus, the FAA does not expect to incur any additional charting costs, or administrative costs as a result of the proposed rule.

B. Benefits

The NPRM would maintain the current level of aviation safety, increase the harmonization of the U.S. Federal regulations with Transport Canada, and better describe the intent and activities addressed by part 93.

Sightseeing aircraft operators would obtain no incremental safety benefits because the baseline, which is defined as current practice, is no different from the proposed rule. As was mentioned before, under current practice, a temporary flight restriction is in effect since 1992 in the airspace above Niagara Falls to prevent an unsafe congestion of sightseeing and other aircraft. As a result of the temporary flight restriction, the FAA estimates that the total baseline safety benefits have been substantial, approximately $20.0 million from 1992 to the present (See Appendix A for details). However, there would be no incremental safety benefits as a result of the proposed rule. With the codification of the temporary flight

restriction, the restriction would become permanent; thus, the current level of aviation safety would be maintained.

The NPRM would also increase the harmonization of U.S. Federal regulations with Canadian regulations. On September 29, 1992, two sightseeing helicopters collided over Niagara Falls. Transport Canada restricted aircraft operations, in Canadian airspace, within a 2 nautical mile radius of the Falls and the FAA issued a temporary flight restriction addressing aircraft operations in U.S. airspace adjacent to the Falls. The proposed rule would codify that restriction, therefore, harmonizing U.S. and Canada regulations.

The NPRM would describe better the intent and activities addressed by part 93. Specifically, the title, "Special air traffic rules and airport traffic patterns" would be modified to read, "Special air traffic rules".

C. Conclusion

The proposed rule would impose no costs, would maintain aviation safety, would increase the harmonization of the U.S. Federal regulations with Transport Canada, and would better describe the intent and activities addressed by part 93.

V. INITIAL REGULATORY FLEXIBILITY DETERMINATION

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In view of the no cost impact of the rule, the FAA has determined that this proposed rule would not have significant economic impact on a substantial number of small entities. Consequently, the FAA certifies that the rule would not have a significant economic impact on a substantial number of small entities.

VI. INTERNATIONAL TRADE IMPACT ASSESSMENT

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

The proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

VII. UNFUNDED MANDATES ASSESSMENT

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

APPENDIX A: BASELINE SAFETY BENEFITS

Table 1. Baseline Safety Benefits (2001 Dollars)

YEAR/YEAR RANGE	# OF ACCIDENTS	DATE	AIRCRAFT MODEL	FATALITIES	SERIOUS INJURIES	AIRCRAFT DAMAGE	AIRCRAFT DAMAGE COST	TOTAL COST OF ACCIDENTS
1983	0	NO ACCIDENTS						
1984	0	NO ACCIDENTS						
1985	1	05/21/1985	CESSNA 182	3	1	DESTROYED	$78,000	$8,699,800
1986-1988	0	NO ACCIDENTS						
1989	1	05/30/1989	HUGHES HU-369	0	0	SUBSTANTIAL	$76,000	$76,000
1990-1991	0	NO ACCIDENTS						
1992	1	09/29/1992	HUGHES HU-369	4	0	DESTROYED	$315,000	$11,115,000
			BELL BHT-206-B			SUBSTANTIAL	$97,000	$97,000
TOTAL 1983-1992	3	n.a.	n.a.	7	1	n.a.	$566,000	$19,987,800
TOTAL 1992-PRESENT	0	NO ACCIDENTS						
BASELINE SAFETY BENEFITS	3	n.a.	n.a.	7	1	n.a.	$566,000	$19,987,800

Source: U.S. Department of Transportation, Federal Aviation Administration, Operations Regulatory Analysis Branch. July 2001.

REGULATORY EVALUATION SUMMARY

FOR INSERTION IN THE PREAMBLE

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) would generate benefits and not impose any costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

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